

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES TICKELL, LIQUIDATOR OF)
THIRDSpace LIVING LIMITED,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. 06-_____
)
)
BROADBAND MANAGEMENT)
SOLUTIONS, LLC, a Delaware Limited ,)
Liability Company and)
C-COR CORPORATION,)
a Pennsylvania corporation)
)
Defendants.)

COMPLAINT

For his Complaint against Broadband Management Solutions, LLC (“BMS”) and C-Cor Corporation (“C-Cor”), James Tickell, Liquidator of Thridspace Living Limited, alleges the following.

THE PARTIES

1. Plaintiff James Tickell (the “Liquidator”) is a citizen of the United Kingdom residing in the United Kingdom. He is the Liquidator of Thridspace Living Limited (“Thridspace”) pursuant to the laws of the United Kingdom under the Insolvency Act of 1986.
2. Thridspace is a corporation formed under the laws of the United Kingdom. It is in liquidation proceedings pursuant to the laws of the United Kingdom under the Insolvency Act of 1986. Its former principal place of business was in Maidenhead, United Kingdom.
3. In June 2003 the Liquidator was appointed by the stockholders and creditors of Thridspace to act as Liquidator, in which position he has full control of Thridspace’s business and affairs and has full authority to act on its behalf.

4. As Liquidator of Thirdspace, the Liquidator has no financial interest in the proceeds that he seeks to recover through this litigation. Rather, he is acting on behalf of creditors of Thirdspace, to whom substantial sums are owed, and any recovery that he receives through this litigation, with the exception of the costs of the litigation, will be turned over to such creditors.

5. Defendant BMS is a corporation formed under the laws of the State of Delaware.

6. Defendant C-Cor is a corporation formed under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania.

JURISDICTION

7. The Court has jurisdiction over this action by virtue of 28 U.S.C. § 1332(a)(2), in that this is an action between a subject of a foreign state and a citizen of a state, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. Defendant BMS is subject to the personal jurisdiction of this Court because it is a Delaware corporation, whose registered agent in the state of Delaware is Corporation Trust Company, Corporation Trust Center, 1209 Orange Street Wilmington Delaware, 19801.

9. Defendant C-Cor is subject to the personal jurisdiction of this Court because it transacts business and contracts to supply goods and services in the State of Delaware, both directly and through subsidiaries with whom C-Cor has such a unity of interest and ownership that separate personalities no longer exist.

FACTS

10. As of October 2000, Thirdspace and nCube jointly owned certain United States Patents, including patent nos. 5,623,595 (the “595 Patent), which relates to “method and apparatus for transparent, real time reconstruction of corrupted data in a redundant array data storage system”), and 5,805,804 (the “804 Patent”), which relates to “method and apparatus for scalable, high bandwidth storage retrieval and transportation of multimedia data on a network” (collectively the “Patents”).

11. In November 2000, nCube advised Thirdspace that nCube desired to commence patent infringement litigation relating to the Patents against SeaChange International Inc. (“SeaChange”).

12. SeaChange had previously commenced patent litigation against nCube in this Court, on June 13, 2000, *see SeaChange International Inc. v. nCube Corp.*, Civil Action No. 00-568 JJF (D. Del.), which was one of the reasons why nCube desired to commence patent infringement litigation against SeaChange. Thirdspace was not a party to that action filed by SeaChange.

13. In order to establish an agreed-upon allocation of rights and responsibilities with respect to the legal action that nCube intended to commence against SeaChange for infringement of either or both of the Patents, Thirdspace and nCube entered into a written agreement entitled “Patent Licensing Agreement between nCube and Thirdspace” in November 2000 (the “Agreement”).

14. A true and correct copy of the Agreement is attached hereto as Exhibit A.

15. Thirdspace executed the Agreement on November 14, 2000, and nCube executed the Agreement on November 26, 2000.

16. In the Agreement, Thirdspace agreed it would not assign its rights to the patents to SeaChange.

17. In consideration for this Agreement, nCube agreed:

nCube will pay to Thirdspace forty percent (40%) of any cash damages actually received by nCube as a result of any patent infringement litigation brought by nCube against SeaChange under the Patents, without any cost of such litigation accruing to, borne by or payable by Thirdspace.

18. The Agreement is a fully valid, binding, and enforceable contract that obligates Thirdspace and nCube and their successors in interest to comply with its terms and provisions.

19. Thirdspace performed any and all of its obligations and conditions precedent as required by the Agreement.

20. nCube commenced a patent infringement lawsuit relating to the Patents against SeaChange in this Court on January 8, 2001. *See nCube Corp. v. SeaChange International Inc.*, Civil Action No. 01-11 JJF (D. Del.) (the “nCube Patent Litigation”).

21. At the conclusion of a jury trial in the nCube Patent Litigation, the jury returned a verdict in favor of nCube on May 29, 2002 (D.I. 128 in the nCube Patent Litigation). Judgment was entered in favor of nCube in the nCube Patent Litigation on July 2, 2002 (D.I. 142).

22. Following post-trial briefing in the nCube Patent Litigation, in an order dated March 31, 2003, the Court (a) awarded enhanced damages in favor of nCube and against SeaChange in the amount of \$4,071,658.00; (b) awarded nCube prejudgment interest in the amount of \$62,101.00; (c) awarded nCube 2/3 of the attorneys’ fees and costs that it had incurred, in the amount of \$1,839,852.30; and (d) awarded nCube post-judgment interest in an amount to be determined (D.I. 182).

23. On December 31, 2004, C-Cor acquired nCube. According to C-Cor's press release and form 8-k announcing the acquisition, nCube was merged into BMS, a wholly owned subsidiary of C-Cor, with BMS as the surviving entity.

24. Following the merger, however, C-Cor substituted itself for nCube as the real party in interest in the nCube Patent Litigation, and represented to this Court and the United States Court of Appeals for the Federal Circuit that C-Cor was the successor in interest to nCube.

25. Both C-Cor and SeaChange appealed from the judgment to the Court of Appeals for the Federal Circuit (D.I. 184, 189). The Court of Appeals affirmed this Court's judgment (D.I. 196).

26. In an order dated April 6, 2006, the Court revised its March 31, 2003 order, and award nCube (now C-Cor) (a) enhanced damages in the amount of \$5,575,310.00; (b) prejudgment interest in the amount of \$62,101.00; (c) 2/3 of the attorneys' fees and costs that it had incurred, in the amount of \$1,839,852.30; and (d) post-judgment interest in the amount of \$527,822.00 for the period July 2, 2002 through March 17, 2006, plus prejudgment interest in the amount of \$460.00 per day from March 18, 2006 through the date of payment of the judgment amount (D.I. 201). These damages only covered the infringement by SeaChange of the Patents through 2002.

27. In C-Cor's 2006 Annual Report, C-Cor reported that on April 20, 2006 SeaChange paid C-Cor and/or BMS \$8,021,000 pursuant to the award entered by the district court.

28. Upon information and belief, C-Cor and BMS continue to seek damages from SeaChange regarding its infringement of the Patents since 2002. The Liquidator fully reserves his right to seek 40% of the proceeds from such efforts in the future.

29. The Liquidator, acting on behalf of Thirdspace, has requested that C-Cor and/or BMS pay over to the Liquidator 40% of the monies that C-Cor has received from SeaChange as a result of the judgment entered in the nCube Patent Litigation. C-Cor and/or BMS, however, have refused to pay.

CLAIM FOR RELIEF – BREACH OF CONTRACT

30. The Liquidator incorporates the preceding paragraphs of this Complaint as if they were set forth in full.

31. The monies that SeaChange has paid to C-Cor and/or BMS as a result of the judgment entered in the nCube Patent Litigation constitute “cash damages actually received by nCube as a result of” the nCube Patent Litigation as that phrase is used in the Agreement.

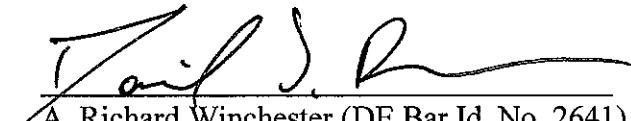
32. The Liquidator is contractually entitled under the Agreement, on behalf of Thirdspace, to receive 40% of the “cash damages actually received by nCube as a result of” the nCube Patent Litigation.

33. The failure by Defendants to pay the Liquidator (acting on behalf of Thirdspace) 40% of the “cash damages actually received by nCube as a result of” the nCube Patent Litigation constitutes a breach of the contractual obligations of C-Cor to Thirdspace (and hence to the Liquidator) under the Agreement.

34. As a result of the breach by C-Cor of its contractual obligations to Thirdspace (and hence to the Liquidator) under the Agreement, the Liquidator (and hence Thirdspace) has been harmed in an amount equal to forty percent of the cash damages received from SeaChange (based on the amount reportedly received by C-Cor, this amounts to \$3,208,400.00) together with prejudgment interest on that amount, calculated from the date when C-Cor and/or BMS received payment of such monies.

WHEREFORE, plaintiff James Tickell, Liquidator of Thirdspace Living Limited, requests that judgment be entered in his favor and against defendant C-Cor and BMS, jointly and severally in the amount of 40% of the monies that Defendants received from SeaChange as a result of the judgment entered in the nCube Patent Litigation, together with prejudgment interest on that amount, calculated from the date when Defendants received payment of such monies, and such other relief as may be appropriate.

MCCARTER & ENGLISH, LLP



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Atlanta, GA 30309
(404) 853-1500

Dated: August 15, 2007

Attorneys for Plaintiff
James Tickell, as Liquidator of Thirdspace
Living Limited

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EXHIBIT A

**Patent Licensing Agreement between
nCube and Thridspace**

Whereas nCube and Thridspace jointly own U.S. Patent 5,623,595 ("Method and apparatus for transparent, real time reconstruction of corrupted data in a redundant array data storage system") and U.S. Patent 5,805,804 ("Method and apparatus for scalable, high bandwidth storage retrieval and transportation of multimedia data on a network") (collectively, the "Patents"), and

Whereas nCube and Thridspace each have full and independent rights to license the Patents, and

Whereas nCube desires to pursue legal action or remedy on the Patents against SeaChange International ("SeaChange"), and

Whereas nCube desires assurance from Thridspace that Thridspace will not assign, license or otherwise grant to SeaChange any interest in the Patents nor will Thridspace independently commence a patent infringement action against SeaChange relating to the Patents,

Now therefore, the parties agree as follows:

Thridspace hereby agrees that it will not assign, license or otherwise grant to SeaChange any interest in the Patents nor will Thridspace independently commence a patent infringement action against SeaChange relating to the Patents prior to the later of the third anniversary of the date of this Agreement or upon completion of any patent infringement action relating to the Patents and initiated by nCube against SeaChange.

As consideration for the foregoing, the parties agree as follows:

- 1) nCube will pay to Thridspace forty percent (40%) of any cash damages actually received by nCube as a result of any patent infringement litigation brought by nCube against SeaChange under the Patents, without any cost of such litigation accruing to, borne by or payable by Thridspace.
- 2) If, in any patent infringement litigation brought by nCube against SeaChange under the Patents, it is determined by the court that Thridspace is a necessary party to the litigation, Thridspace consents to be joined and to have the claims proceed on its behalf as well as nCube's, in joint representation at nCube's expense.
- 3) Any patent infringement litigation brought by nCube against SeaChange under the Patents will not be compromised or settled without the consent of Thridspace. If during the course of any such litigation Thridspace determines in its sole discretion that it should intervene or otherwise appear to protect its rights, nCube will not oppose such an application.

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003

4) In the event that, as a result of any action taken by nCube against SeaChange, any claim of the Patents is found invalid, nCube agrees to pay an amount to Thirdspace to reasonably compensate it for the reduction in, or destruction of, the value of its interest in the Patents. In the event that the parties cannot reach agreement as to such compensation within 30 days of notice, the matter will be submitted to binding arbitration before a generally recognized arbitration organization chosen by Thirdspace, to be performed according to the rules of such organization, before a single arbitrator appointed by such organization, in a venue to be selected by Thirdspace, the costs of such arbitration proceeding (i.e., fees of the organization and arbitrator) to be paid by nCube.

If nCube does not bring a cause of action against SeaChange by July 1, 2001, this Agreement will terminate on that date.

Thirdspace and nCube hereby agree that any licensing of rights under the Patents, whether to SeaChange or to other third parties, will be on a non-assignable and non-transferable basis and will terminate upon merger, acquisition, or change in control of the licensed party.

Dated: November 26, 2000

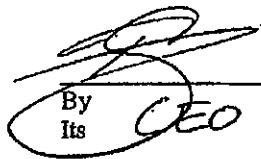
nCUBE CORPORATION



By MICHAEL PAUL
Its PRESIDENT

Dated: November 14, 2000

THIRDSPACE



By CEO
Its

Gray Cary\HV\7064266.1
1140417-902600

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

*James Ticeh, Liquidator for Thirdspace
Living Limited*

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

*Broadband Management Solutions, LLC
C-Cor Corporation*

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)
*A. Richard Winchester McCarter & English, LLP
405 N. King St. Wilmington DE 19801 984-6300*

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF

DEF

 1 1

Incorporated or Principal Place of Business In This State

PTF

DEF

 4 4

Citizen of Another State

PTF

DEF

 2 2

Incorporated and Principal Place of Business In Another State

 5 5

Citizen or Subject of a Foreign Country

PTF

DEF

 3 3

Foreign Nation

 6 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT

TORTS

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

110 Insurance
 120 Marine
 130 Miller Act
 140 Negotiable Instrument
 150 Recovery of Overpayment & Enforcement of Judgment
 151 Medicare Act
 152 Recovery of Defaulted Student Loans (Excl. Veterans)
 153 Recovery of Overpayment of Veteran's Benefits
 160 Stockholders' Suits
 190 Other Contract
 195 Contract Product Liability
 196 Franchise

310 Airplane
 315 Airplane Product Liability
 320 Assault, Libel & Slander
 330 Federal Employers' Liability
 340 Marine
 345 Marine Product Liability
 350 Motor Vehicle
 355 Motor Vehicle Product Liability
 360 Other Personal Injury

PERSONAL INJURY
 362 Personal Injury - Med. Malpractice
 365 Personal Injury - Product Liability
 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
 370 Other Fraud
 371 Truth in Lending
 380 Other Personal Property Damage
 385 Property Damage Product Liability

PERSONAL INJURY
 610 Agriculture
 620 Other Food & Drug
 625 Drug Related Seizure of Property 21 USC 881
 630 Liquor Laws
 640 R.R. & Truck
 650 Airline Regs.
 660 Occupational Safety/Health
 690 Other

422 Appeal 28 USC 158
 423 Withdrawal
28 USC 157

PROPERTY RIGHTS
 820 Copyrights
 830 Patent
 840 Trademark

400 State Reapportionment
 410 Antitrust
 430 Banks and Banking
 450 Commerce
 460 Deportation
 470 Racketeer Influenced and Corrupt Organizations
 480 Consumer Credit
 490 Cable/Sat TV
 810 Selective Service
 850 Securities/Commodities/ Exchange
 875 Customer Challenge
12 USC 3410
 890 Other Statutory Actions
 891 Agricultural Acts
 892 Economic Stabilization Act
 893 Environmental Matters
 894 Energy Allocation Act
 895 Freedom of Information Act
 900 Appeal of Fee Determination Under Equal Access to Justice
 950 Constitutionality of State Statutes

REAL PROPERTY

CIVIL RIGHTS

PRISONER PETITIONS

LABOR

SOCIAL SECURITY

FEDERAL TAX SUITS

210 Land Condemnation
 220 Foreclosure
 230 Rent Lease & Ejectment
 240 Torts to Land
 245 Tort Product Liability
 290 All Other Real Property

441 Voting
 442 Employment
 443 Housing/ Accommodations
 444 Welfare
 445 Amer. w/Disabilities - Employment
 446 Amer. w/Disabilities - Other
 440 Other Civil Rights

CIVIL RIGHTS
 510 Motions to Vacate Sentence
Habeas Corpus:
 530 General
 535 Death Penalty
 540 Mandamus & Other
 550 Civil Rights
 555 Prison Condition

710 Fair Labor Standards Act
 720 Labor/Mgmt. Relations
 730 Labor/Mgmt. Reporting & Disclosure Act
 740 Railway Labor Act
 790 Other Labor Litigation
 791 Empl. Ret. Inc. Security Act

861 HIA (1395ff)
 862 Black Lung (923)
 863 DIWC/DIWV (405(g))
 864 SSID Title XVI
 865 RSI (405(g))

870 Taxes (U.S. Plaintiff or Defendant)
 871 IRS—Third Party
26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(a)(2)

Brief description of cause:

action to enforce a contract

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/15/07

SIGNATURE OF ATTORNEY OF RECORD

Daniel S. R.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-500

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 4 COPIES OF AO FORM 85.

8/15/2007
(Date forms issued)

Michael J. Lamm
(Signature of Party or their Representative)

Michael J. Lamm
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action